

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

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In Re:

WORLDCOM, INC., et al.,

Chapter 11 Case No.  
02-13533 (AJG)

(Jointly Administered)

Debtors.

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Before: The Honorable Arthur J. Gonzales,  
United States Bankruptcy Judge

Taken on July 1, 2003 at 11:00 a.m. at the United  
States Bankruptcy Court, One Bowling Green,  
Manhattan, New York.

A P P E A R A N C E S

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I N D E X

| <u>WITNESS</u> | <u>DIRECT</u> | <u>CROSS</u> | <u>REDIR</u> | <u>RECROSS</u> |
|----------------|---------------|--------------|--------------|----------------|
| RAY AHERN      | 4             | 60           | 82           |                |

WORLDCCM, INC.

1 THE COURT: My recollection being  
2 that the last hearing the witness was  
3 either -- we were going to call the  
4 next witness or the witness was about to  
5 be cross examined, so, please proceed.

6 MR. ENGELMAN: I'm David Engelman,  
7 appearing on behalf of the Trustee, Mr.  
8 Bein, who testified. I think we've just  
9 completed with him and I think we're  
10 getting ready for the Debtor's  
11 examination.

12 THE COURT: Will the witness then  
13 take the stand, please?

14 MS. KING: Kristin King for the  
15 Debtor, we have some additional exhibits  
16 that we wanted to put forward in order  
17 to give them to opposing Counsel.

18 MR. STROCHAK: Your Honor, Adam  
19 Strochak. If I can just clarify to the  
20 Court, I think we concluded last time,  
21 the Movement had rested his case. We  
22 had already cross examined their  
23 witness. The gentleman who just took  
24 the stand, Mr. Ray Ahern, was the  
25 Debtor's witness, I mean. I just wanted

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1 to make sure you understood that so  
2 there's no confusion.

3 THE COURT: With respect to these  
4 Exhibits, you've shown them to opposing  
5 and are there any objections, Mr.  
6 Engelman?

7 MR. ENGELMAN: No objection,  
8 Your Honor.

9 THE COURT: They are identified  
10 as Debtor's Exhibits, numbers, as  
11 amended, A through I.

12 MS. KING: It'll be A through I,  
13 Your Honor.

14 THE COURT: So admitted. If not,  
15 we can turn back to the witness, please.

16 THE WITNESS: Just to clarify,  
17 I've not been sworn in as yet.

18 R A Y A H E R N, having been first duly sworn  
19 according to law, testified as follows:

20 DIRECT EXAMINATION

21 BY MS. KING:

22 THE COURT: You may commence the  
23 examination.

24 Q. Good morning.

25 A. Good morning, Ms. King.

WORLDCOM, INC.

1 Q. Would you mind stating your name again  
2 for the record, please?

3 A. My name is Ray Ahern.

4 Q. What is your relation to Worldcom?

5 A. I'm an employee, have been there 18  
6 years.

7 Q. In what capacity do you currently serve  
8 at Worldcom?

9 A. I'm the Director for Business Operations  
10 in the Art Channel Department.

11 Q. Now, what actually do you do for the  
12 Channel Division or what do you perform vis-a-vis  
13 represent agreements or agents or what?

14 A. Well, primarily, a function of the  
15 Channels Department is the management and  
16 procurement of bringing on new avenues of  
17 distribution of our products through non-employees  
18 such as companies or individuals and so as to  
19 evaluate to re-sellers.

20 Q. Generally, are you familiar with the  
21 representation agreements that Worldcom has  
22 entered with representative agents?

23 A. Very much so, part of my function as  
24 Operations Director -- I work with our legal  
25 department on building these contracts in terms of

WORLDCOM, INC.

1 what has become the standard agreements that are  
2 out there today, the boiler plate.

3 Q. Now, what is the role of agents for  
4 Worldcom?

5 A. Agents are another avenue for marketing  
6 and distributing our products out into the  
7 marketplace. Essentially, the easiest way to  
8 perhaps look at it is to state that they are an  
9 extension of the sales force, they augment the  
10 "MCI/WORLDCOM" sales force by really broadening  
11 the footprint of our representations out in the  
12 market.

13 Q. And are you familiar with the HSG/ATN  
14 movement?

15 A. I am.

16 Q. And in what way are you familiar with  
17 them?

18 A. I know that prior to the 1998 merger  
19 between MCI and Worldcom, "ATN" was already an  
20 agent with Worldcom for, I guess, going back from  
21 this point at least the last ten years or so.

22 Q. And at what point in time in your  
23 capacity as Director of the Channel Division did  
24 you become familiar with "ATN"?

25 A. After the merger, when I became part of

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1 the agent program or Channels Department within  
2 Worldcom, I became familiar with "ATN" through  
3 amendments that were done to the latest agreement  
4 that "ATN" had executed with Worldcom back in  
5 August of 1998.

6 Q. Now, I'd like to draw your attention to  
7 the Movement's Exhibits. Do you have the Exhibit  
8 Book in front of you?

9 A. I do.

10 Q. Specifically, turn to Exhibit No. 1.  
11 And with your knowledge and understanding, that is  
12 the representation agreement you've heard between  
13 "HSG" and "ATN", as I'll refer to as "ATN" and  
14 Worldcom?

15 A. Yes, it is.

16 Q. And what specifically, in a general way,  
17 obviously, based upon your knowledge of these  
18 agreements and the amendments thereto, does the  
19 representation agreement require "ATN" to do on  
20 behalf of Worldcom?

21 A. Really, the function of the agreement is  
22 both disagreement and our agreement in general  
23 that we continue to have with agents or evaluated  
24 with the re-sellers today. It permits them to be  
25 an authorized representative to the public to

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WORLDCOM, INC.

1 businesses and to sell our products, that is to  
2 say, Worldcom products.

3 Q. And with that role -- strike that. Was  
4 that role limited in any way by terms of the  
5 agreement or in terms of what that really meant in  
6 terms of carrying those products?

7 A. The agreement is very specific to what  
8 the representative is allowed to do and what they  
9 cannot do and so it's defined for them as to what  
10 we warrant their role to be which is strictly to  
11 go out and procure new customers for MCI Worldcom  
12 and, you know, for that they receive compensation.

13 Q. I would like to draw your attention to  
14 Sections 11.1 and 12.1 of the representation  
15 agreement.

16 A. Yes.

17 Q. Would you please read the first two  
18 lines of that provision, please?

19 A. Certainly. "Representative understands  
20 that representative is an independent contractor  
21 and not an employee of Worldcom under this  
22 agreement and that Worldcom is interested only in  
23 the orders for services that representative  
24 obtains".

25 Q. And what, in your opinion, is the import



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1 of that particular provision?

2 A. Well, I think it's making it very clear  
3 both in here and in the very front of the  
4 agreement that what we're looking for is to --  
5 we're looking for representatives to procure new  
6 customers and new orders for customers under the  
7 agreement, limited to the services that the  
8 agreement allows the representative to represent  
9 themselves as being an agent or representative of  
10 MCI Worldcom.

11 Q. Pursuant to this agreement, what were  
12 those services that "ATN" was marketing?

13 A. Well, all of our contracts that I'm  
14 familiar with including this one listed in Exhibit  
15 A, are enlisting the products that the  
16 representative is authorized to sell.

17 Q. Turning your attention to Exhibit A now,  
18 the services listed there, the Ultra call, one  
19 plus the Ultra call, toll free and the Ultra card.  
20 Were those Worldcom services that were being sold  
21 by "ATN"?

22 A. Yes, those are the services that under  
23 the initial agreement that the representative was  
24 authorized to sell. These are the "TTI" National  
25 Services and just for your own understanding,

WORLDCOM, INC.

1 "TTI" is or was a wholly owned subsidiary of  
2 Worldcom and the different brand names that are on  
3 our platform owned by MCI Worldcom.

4 Q. Although Worldcom is listed in the  
5 agreement, the services that were actually sold  
6 were the "TTI" services?

7 A. Yes, the marketing, that and the  
8 independent user or customer would see or would  
9 have a brand name of "TTI" National.

10 Q. I'd like to turn your attention or have  
11 you turn your attention to 8.1 of the  
12 representation agreement. Are you generally  
13 familiar with this provision in this agreement?

14 A. Very familiar with it, yes.

15 Q. Can you tell me generally what this  
16 provision requires?

17 A. This provision is in all our agreements  
18 and is stated in all of our agreements and is that  
19 the company or the covenant shall be guaranteed  
20 between MCI and the representative, those  
21 customers that the representative has procured for  
22 "MCI" or now "MCI" customers and we will continue  
23 to pay or we will pay the representative a  
24 commission as outlined in the contract for those  
25 customers, but in the event that the agreement

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1 should terminate under certain terms and  
2 conditions that are listed, the agent or  
3 representative will not contact those customers  
4 for the purpose of eliciting them to a competitive  
5 service.

6 Q. Okay. And can you describe what vehicle  
7 is that, is that 8.1 provision? That's to say,  
8 8.1, the non-solicitation provision? Would that  
9 be a standard provision that you would include in  
10 all of your representation agreements?

11 A. Yes. If you've got an agreement, a  
12 department or from one of our general managers,  
13 you would see that provision in the contract.

14 Q. So, it's not unique to the "ATN"?

15 A. No, this is a very standard, I mean and  
16 it's -- in all of them and each in 8.3 portion of  
17 that, that illustrate what we call a "USE" action  
18 and what course of action Worldcom would take  
19 which is the 8.2 if it were breached.

20 Q. And what specifically was that action  
21 under 8.3?

22 A. That we would provide notice to the  
23 representative of the breach of 8.1 and within  
24 five days cease paying all commissions occurring  
25 from that point forward.

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1 Q. Then turn your attention to Exhibit A,  
2 we've already covered, but B, specifically what  
3 provisions do these relate with regard to  
4 commission?

5 A. Exhibit B outlines, you know, how the  
6 fact that a representative will be paid commission  
7 for the order submitted and accepted as a stall by  
8 Worldcom and just generally outlines, you know,  
9 what we will be paying or what we pay or what we  
10 do pay and what the payments would be and how  
11 exactly the payments would be made to the  
12 representative, that is the terms.

13 Q. Now, drawing your attention specifically  
14 to Exhibit No. D?

15 A. Yes.

16 Q. Would you describe generally what this  
17 Exhibit requires? This Exhibit B?

18 A. Yes, this is -- it's termed Exhibit D,  
19 service levels and it has in here some kind of  
20 backup service level agreement between Worldcom  
21 and the representative for how the customer  
22 service center would perform on any period.

23 Q. Now, a standard or a standard provision  
24 that you include in most representation  
25 agreements?

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1       A.    In some of the agreements that I have  
2   been involved in since going back to early 1999  
3   with Worldcom, I've never seen or recall ever  
4   having in our agreements anything that is related  
5   to service lines and this I would have to say is  
6   pretty unique and was done at the request of the  
7   "ATN" representative.

8       Q.    Those are related exclusively to the  
9   customer service that would be provided by "TTI",  
10  is that correct?

11      A.    That's right. "TTI" or Worldcom  
12  customer service center.

13      Q.    Now, turning your attention to the  
14  subsequent numbered Exhibit in the Exhibit book  
15  submitted by you with each of the amendments to  
16  the representation agreement.

17      A.    I've read them and I have through the  
18  years, I've seen them in various books and at  
19  times.

20      Q.    Now, do each of the amendments included  
21  in the Exhibit book represent your understanding  
22  of the amendments that were entered between agents  
23  and "ATN" and the representatives?

24      A.    Yes.

25      Q.    That is to say, with relation to the

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1 representation agreement, how your customers are  
2 notified to call Worldcom with customer service  
3 requests or the "TTI", I should say?

4 A. Well, in any event, there is a number of  
5 ways that a customer is made aware of our customer  
6 service center. They receive a welcome letter  
7 that will have the 800 number in several areas on  
8 it and the letter itself which bears the same 800  
9 numbers provided on the monthly invoice, to  
10 customer, that the customer would see the 800  
11 number again, which is placed on the back of the  
12 calling card, if the customer was to have a  
13 calling card. And we also have a public web site  
14 that customers would access to which would tell  
15 them how to get in touch with our customer service  
16 center. We have Republic web site which customers  
17 could access and all, for example, would provide  
18 the same 800 number that I just described to you.

19 Q. Drawing your attention to Debtor's  
20 Exhibit No. A, would you tell me what copies of  
21 documents these are?

22 A. These were copies sent to me out of our  
23 calling card performing area and they are some  
24 examples of how you would call a custom calling  
25 card customer and the custom being that the front

WORLDCOM, INC.

1 of the card has a unique offer that has been done  
2 to it, not just say, your standard "TTI" type of  
3 offer.

4 Q. Turning to page four of Exhibit No. A,  
5 it does respond for the front of the card that  
6 would have been issued to customers, is that  
7 correct?

8 A. These are examples of actual cards that  
9 -- at various times I would assume that our  
10 calling or our performance center, provided  
11 custom calling cards that were related to "ATN".

12 Q. Were these cards issued pursuant to an  
13 agreement with "ATN"?

14 A. Calling cards are a product of the  
15 Exhibit A that "ATN" would sell, yes.

16 Q. Would all customers that had been  
17 originally solicited by "ATN", that became  
18 Worldcom customers, would they have received these  
19 cards?

20 A. Again, if the customer through the "ATN"  
21 wanted a calling card, which a calling card is a  
22 major component, "ATN" could provide, whether it's  
23 one of the custom cards or our standard "TTI"  
24 brand name calling card and that cost them.

25 Q. Can you tell me what number is listed

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1 for customer service on these cards, please?

2 A. Customer service is in "TTI" National`  
3 "MCI" Worldcom, if you will, 800 number, directing  
4 those calls to our San Antonio calling center.

5 Q. And how would an individual who will  
6 have received the card know to call that number?

7 A. It's on the back of the card.

8 Q. And the information related to a number  
9 at the top of the card under the designation  
10 "ATN", the top would be a number there, that of an  
11 "ATN" number, is that correct?

12 A. Yes, it is. I believe so.

13 Q. And what was the purpose of putting the  
14 number on the front of that card as opposed to the  
15 customer service number on the back?

16 A. Well, I would assume "ATN" requested  
17 that the 800 number be on it and to direct the  
18 person that called to that number if they were  
19 looking for additional cards or wanted other  
20 services so that they could contact "ATN" for  
21 those services, and go to us -- and, of course,  
22 customer service, on the other hand, would have  
23 been directed with regard to the back of the car  
24 for customer service, would call the 800 number.

25 Q. Is that 800 umber, is that for your San



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1 Antonio customer center?

2 A. San Antonio is where the customer  
3 service center for "TTI" is located. I mean, MCI  
4 Worldcom has a number of customer service sites  
5 throughout the country for, you know, different  
6 divisions, the consumer division and the business  
7 division that I'm in, so we have a lot more than  
8 San Antonio. But the "TTI" customers were  
9 specifically directed to San Antonio.

10 Q. Who's responsible for issuing these  
11 cards to your customers, the Worldcom customers?

12 A. These come up all from our fulfillment  
13 center.

14 Q. "TTI"?

15 A. "TTI". I mean, the art work itself gets  
16 sent out to a company that does it and does the  
17 logos and everything that is on the card and that  
18 is coordinated through our operation.

19 Q. And I'd like to try and draw your  
20 attention to Debtor's Exhibit B. Please, are you  
21 familiar with Debtor's Exhibit B?

22 A. Yes, I am.

23 Q. Please tell me what it is.

24 A. It's a copy of an invoice that would go  
25 to the "TTI" customer.

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1 Q. And can you tell me what number is  
2 listed on the number of customer service on this  
3 invoice?

4 A. That is the number to our San Antonio  
5 customer service location, the same one that would  
6 appear in the welcome letters and the web site and  
7 the calling card.

8 Q. And there's a paragraph that specifies  
9 information related to "ATN". Are you familiar  
10 with that paragraph?

11 A. Yes, I am.

12 Q. Can you tell me why that paragraph was  
13 included in this invoice?

14 A. That is what we call a "bill message"  
15 and it's used to put some sort of message out  
16 there on the invoice for customers and you have a  
17 bill message that wishes customers happy holiday  
18 or happy July 4<sup>th</sup> or, you know, it could be a  
19 number of messages but here it is, a message on  
20 behalf of "ATN" on the invoice saying that we  
21 really appreciate your business and it means -- I  
22 mean, it's kind of like, almost like an ad, if you  
23 wanted to become a dealer or an agent or some sort  
24 of thing like that with "ATN". And you would call  
25 their 800 number.

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1 Q. So the 800 listing is related to an  
2 interest in becoming a dealer?

3 A. That's correct.

4 Q. And this is a message that was included  
5 to your knowledge, consistent with the type of  
6 invoices that have been sent out prior to July as  
7 well?

8 A. They certainly are, yes.

9 Q. And all those ones prior to July -- or  
10 prior to this July, involves Worldcom's customer  
11 service number as regards the 800 number listed?

12 A. Our customer service number whether it's  
13 for customers that were brought to us by "ATN" or  
14 any other agent or customer calling, would be  
15 there or anybody else would have the same invoice  
16 plus the 800 number or the same number.

17 Q. All right, let's turn your attention to  
18 Debtor's Exhibit No. C. Can you tell me what that  
19 document is, please?

20 A. This is another sample of a "ATN"  
21 National customer invoice, only a month after the  
22 other Exhibit that Ms. King directed me to.

23 Q. What is the date of this particular  
24 invoice?

25 A. August the 22, 2002.

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1 Q. And it would have been a Worldcom  
2 Chapter 11 filing center? Is that right?

3 A. Yes.

4 Q. And in relationship to this particular  
5 invoice, the information related to "ATN" has been  
6 removed". Can you tell why that was?

7 A. The bill message was removed because by  
8 the time this invoice was generated, the agreement  
9 between "ATN" and Worldcom had been terminated.

10 Q. And what was the purpose then related to  
11 the termination that the information was removed?

12 A. Well, the bill message -- I mean,  
13 there's no sense in having "ATN" put a bill  
14 message on there. They were no longer an active  
15 agent authorized to sell our products and  
16 services.

17 Q. Now, I'd like to approach the witness,  
18 please.

19 THE COURT: All right.

20 Q. Are you generally familiar with the  
21 pleadings in this case, Mr. Ahern?

22 A. I have reviewed them at various times,  
23 yes.

24 Q. Have you specifically reviewed the  
25 supplemental declaration of Jeff Bein?

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1 A. I have read it.

2 Q. Now, I would like to draw your attention  
3 specifically to Paragraph 8 of that supplemental  
4 declaration. Now, would you mind reviewing that  
5 and reading the first three sentences, please.

6 A. Yes. "Debtor acted consistently with  
7 our ongoing relationship as well. For example,  
8 after Debtor filed Chapter 11, Debtor continued to  
9 include messages from "HSG" in bills to customers.  
10 These messages instructed customers to call "HSG"  
11 with any service issues. Customers retained their  
12 "HSG" proprietary calling card with "HSG" phone  
13 number. Debtor never provided its own proprietary  
14 replacement".

15 Q. Now,, related specifically to the first  
16 three sentences of that paragraph, sir, is it your  
17 understanding that that is a correct statement?

18 A. It's incorrect.

19 Q. Based on -- Worldcom exactly, I mean,  
20 the August invoice was the first invoice that --  
21 or the invoices that came out after the  
22 termination of the agreement at "ATN"'s request.

23 Q. Now,, I'd like to draw your attention to  
24 Debtor's Exhibit No. B. Can you tell me, please.  
25 -- excuse me one second.

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1 A. I don't see Exhibit B.

2 MS. KING: May I approach the  
3 witness, Your Honor?

4 THE COURT: Go ahead.

5 Q. Can you tell me what this is, please?

6 A. This is an example of a welcome letter  
7 that would go to new customers.

8 Q. Who would be responsible for sending out  
9 that welcome letter?

10 A. The mailing of the letter would come  
11 from "TTI" Worldcom.

12 [end of tape 1, side A]

13 DIRECT EXAMINATION

14 BY MS. KING:

15 Q. Can you tell me what logo the letters  
16 bear?

17 A. In the upper left hand corner, it's the  
18 logo on the "TTI International, Inc." and in the  
19 upper right hand corner it's the logo of Telecom  
20 work "ATN".

21 Q. Who signed the letter?

22 A. It's signed jointly on the left hand  
23 side by George Hampton, who's Vice President  
24 within Worldcom and the signature or the signatory  
25 on the right is Jeffrey Bein, who is the President

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1 listed or as President of "ATN".

2 Q. And would you tell me which number the  
3 recipient of the letter is directed to call for  
4 customer service issues?

5 A. The same number that is on the calling  
6 cards, for "TTI" -- their web site in San Antonio,  
7 customer service center that "TTI" operates.

8 Q. And to your knowledge, is the  
9 information that is included in this welcome  
10 letter consistent with the welcome letters that  
11 would be sent out throughout the representation  
12 agreement between "ATN" and "TTI"?

13 A. Yes, I think the only difference that  
14 you might see if you were to look at the letters  
15 would have been a reference to the type of product  
16 that the customer got. So, if you look at the  
17 second paragraph, where it says "save with long  
18 distance program", I see a reference on the first  
19 line to a 4.9 cent per minute rate. A customer  
20 under another product might have a different rate,  
21 so, depending upon what that customer got, other  
22 than that, I see no difference in what the letter  
23 has.

24 Q. Now, with regard to the "TTI" web site,  
25 sir, how would a customer access that web site?

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1 What would it have directed them to call? Would  
2 it be the customer service or call "TTI" and  
3 Worldcom?

4 A. If you go on the net and if you would go  
5 to "TTI National.com", you know, through the  
6 description, you get to find out how to contact us  
7 and you would drop to a section that would have  
8 "Customer Service description" and you would see  
9 the 800 number there.

10 Q. Now, what services does "TTI" customer  
11 service center provide to the "TTI" Worldcom  
12 customers originally solicited by "ATN"?

13 A. The same services. Mainly, that all of  
14 our customer service centers throughout the  
15 country provide -- it's really a full service  
16 center in terms of addressing customer billing  
17 issues, technical problems, requests to add new  
18 services, delete some. Really, responding to  
19 whatever inquiry the customer might have in either  
20 -- which can be addressed directly by the  
21 representative answering the phone or perhaps  
22 being routed to the appropriate area for handling.

23 Q. What are the hours of operation and  
24 stopping of this customer service center?

25 A. The same. That is the same as the San



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1 Antonio center is stopped, well, our customer  
2 service center down there has about 85 people.  
3 It's staffed with representatives about 45 or 50  
4 who answer the phones and it's only for billing  
5 inquiries and other issues from 7:00 a.m. central  
6 to 9:00 p.m. central. And then after 9:00 p.m.  
7 central, you call that number and you will be  
8 directed to another toll free number and that is  
9 staffed 24 hours a day, seven days a week, 365  
10 days a year for technical issues, non-billing  
11 inquiries, so if a customer, for example, called  
12 and had a problem with their phone service or had  
13 a problem with their calling card, you know, in  
14 the middle of the night, they could reach somebody  
15 at that Internet number.

16 Q. Now, what interaction, if any, did -- or  
17 "ATN" for its employees have with "TTI" customers  
18 at the service center?

19 A. I would imagine that any customer that  
20 would say, contact "TTI", because at the "TTI"  
21 they market under these services or set them up  
22 for the "TTI" service and had an issue, "TTI"  
23 could -- oh, I'm sorry, "ATN" could direct them  
24 over to our customer service center for resolution  
25 or whatever, you know, again depending upon how it

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1 would be routed to us with the billing system,  
2 etc.

3 Q. I'm sorry, could "ATN" resolve any  
4 customer service issues raised by a "TTI"  
5 customer?

6 A. There is no -- a technical issue, where  
7 if there's a billing issue, since we -- it's our  
8 network and our billing system, we generate the  
9 bills. You really would have to work through the  
10 "TTI" Worldcom to resolve it. The best you could  
11 do would be to act as a go-between to help to try  
12 to facilitate the type of issue or issues brought  
13 to us for resolution.

14 Q. Now, I'd like to draw your attention to  
15 Debtor's Exhibit No. E, please. Can you tell me  
16 with relationship to the chart marked "HSG" plea  
17 and post petition, commission, I mean, second page  
18 on the chart, "HSG", plea and post petition  
19 commission. Can you tell me what that chart  
20 represents, please?

21 A. This is a breakdown of the commissions  
22 that would have been earned for the month at the  
23 left hand side and it's divided into those  
24 commissions that were earned in the pre-petition  
25 period, prior to the bankruptcy filing. And then

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1 further down it's listed those commissions earned  
2 in the post-petition period of time.

3 Q. Okay. And the chart marked "HSG 2002"  
4 and "2003" revenue, would you tell me what that  
5 requests, please?

6 A. This also is a breakdown that shows from  
7 January 2002 through April 2003, the  
8 commissionable revenue that should have been to  
9 customers that were brought to "TTI" through "ATN"  
10 and the amount of commission that would have been  
11 earned as a result of the commissionable revenue,  
12 that those customers generated for the months that  
13 are listed on the left hand side.

14 Q. So, for the month of July, when it says  
15 in the chart, month, for instance maybe January,  
16 '02 and revenue quote, 1 point or one million six  
17 hundred and twelve or \$1,612,910.6 and then the  
18 commission, \$2,069,314.44. Is that the revenue  
19 that was generated during the month of January?

20 A. That's correct.

21 Q. And when was the commission related to  
22 that revenue generated in January? When would  
23 that have been paid?

24 A. Our contract, including "ATN"'s  
25 agreement, calls for commissions to be paid on or

WORLDCOM, INC.

1 about 45 days after the billing month that is  
2 listed. So, for January 2002, revenue month  
3 commissions would have been paid on or about March  
4 15<sup>th</sup> of that year.

5 Q. And looking at this chart, can you tell  
6 me what post petition commission would have been  
7 paid or what to "ATN"?

8 A. The post petition commissions if you  
9 want to just go back on the first page of the  
10 Exhibit, it might be easier, shows where July post  
11 listed, that would be from the filing period going  
12 forward. So, from like, I think, July 21<sup>st</sup> of  
13 2002 through July 31<sup>st</sup>, that period of time, that  
14 customers generated commissionable revenue and  
15 it's listed here as having \$28,345.19 commission  
16 figured to it.

17 Q. And that payment would have been made  
18 when?

19 A. I believe that would have been made  
20 around September 15<sup>th</sup> time frame.

21 Q. Okay. And the next commission that  
22 would have been paid?

23 A. The next commission would have been  
24 based upon bonus commissionable revenue and that  
25 would have been paid in a 45 day time after the

WORLDCOM, INC.

1 month of August so that would have been right  
2 around the 15<sup>th</sup> of October, 2002.

3 Q. The chart specifically says that a  
4 commission for the August post-petition period  
5 would have amounted to just over \$199,000 in the  
6 sections noted and that particular payment amount  
7 was \$185,658.59. Could you tell me what the  
8 difference was and what that was for?

9 A. All right. The actual check that was  
10 sent for ATN was for the figures in the comment  
11 section, it was \$185,658.90. The discrepancy of  
12 \$15,764.80 is listed right above that entry and  
13 the explanation is that in the August 3<sup>rd</sup>, 4<sup>th</sup> and  
14 5<sup>th</sup> time frame, those invoices had not originally  
15 been calculated and needed to be extracted out so  
16 pre-petition -- for the pre-petition amount that  
17 was entered for those customers who were invoiced  
18 on those dates. So, you will see that \$13,764.85  
19 listed up above in the pre-petition section to  
20 show that that was part of what the actual claim  
21 amount that we have stated to the Court was pre-  
22 petition for this particular representative. So  
23 it wasn't adjusted, just didn't come out of pre-  
24 petition payment because they're not allowed to do  
25 that.

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1 Q. For the month of August going over to  
2 the revenue generated, the commission check would  
3 have been sent on or about what time frame?

4 A. The August commission would have been  
5 around the 15<sup>th</sup> of October.

6 Q. And the next commission payment on this  
7 chart would be September, 2002?

8 A. That would have been September, 2002,  
9 commissionable revenue generated in that calendar  
10 month.

11 Q. And what was the amount of that payment,  
12 was that commission check?

13 A. The check was in the amount of  
14 \$221,207.24.

15 Q. And around what time would a check have  
16 been sent?

17 A. Approximately 45 days after the calendar  
18 month of September ended, so right around the 15<sup>th</sup>  
19 of November, it would have been the time that  
20 check would have been sent.

21 Q. Now, turning to the second page of that  
22 graph, can you tell me what the total post  
23 commission paid to "ATN" was?

24 A. \$435,211.33.

25 Q. Now, going back from there to the

WORLDCOM, INC.

1 representation, can you tell -- me and turning to  
2 Movant Exhibit No. 8, can you tell me the  
3 circumstances that led to the drafting to the  
4 seventh amendment to the representation agreement?

5 A. Well, we received a letter from "ATN"  
6 that was dated June 28, 2002, and the letter was  
7 addressed to George Hampton, sent care of my name  
8 at my work address and the letter, in effect, was  
9 a notification by "ATN" to Worldcom. That "ATN"  
10 intended to terminate the representation agreement  
11 and by their right to do -- that is, by giving us  
12 30 days notice, if we would not agree to remove an  
13 exclusivity clause within the representation  
14 agreement.

15 Q. Turning forward, I'll pick up in a  
16 minute where we left off. But turning to Exhibit  
17 No. 9, we're moving to Exhibit No. 9, please.

18 A. Yes.

19 Q. Is the letter included or is a copy of  
20 the letter that you received from Mr. Bein  
21 included?

22 A. That letter I received in my office  
23 somewhere right around a day or two after the date  
24 on the 28<sup>th</sup>.

25 Q. And what did it specify with regard to

WORLDCOM, INC.

1 the time line for termination of the agreement?

2 A. It provided that there be -- or that  
3 "ATN" was giving Worldcom 30 day notice of  
4 termination of the representation agreement.

5 Q. And it was at that point or sometime  
6 subsequent to your [inaudible] at that point and  
7 in receipt of this letter that a seventh amendment  
8 was brought into for "ATN"?

9 A. Yes. I mean, in the letter, the request  
10 was to remove that exclusivity in the agreement  
11 and after receiving a letter, we had discussions  
12 internally as to whether or not to agree to remove  
13 the exclusivity portion from the agreement. And  
14 based upon the fact that, you know, we placed a  
15 value on having an exclusive relationship with  
16 "ATN". But after receiving the letter and  
17 determining what we wanted to do, the decision was  
18 made to go ahead and draft -- and work with our  
19 legal department to draft an amendment to that  
20 stipulation reflected in the removal of the  
21 section of the agreement that made for "ATN"  
22 exclusive representative to Worldcom.

23 Q. And when was the seventh amendment  
24 forwarded to "ATN" to your knowledge?

25 A. I received it from our legal department



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1 on July the 10<sup>th</sup> and after reviewing it and  
2 speaking with our attorney then it was forwarded  
3 over the e-mail to Brent Lacho, who is the Sales  
4 Director in Los Angeles who had sales  
5 responsibility for the "ATN" account, instructed  
6 Brent -- Mr. Lacho, that is, that the seventh  
7 amendment was enclosed and protected and could be  
8 forwarded however he saw fit to use it.

9 Q. Subsequent to your sending your seventh  
10 amendment to "ATN", did you become aware of any  
11 activity by "ATN" that would have led you to not  
12 want to let you use the seventh amendment?

13 A. Yes. The seventh amendment was sent  
14 over about a week or so later and we entered the  
15 bankruptcy filing and right at the end of July --  
16 and right about the end of July, I should say, the  
17 first day of August or a couple of days later, I  
18 received a phone call from Brent Lacho and I  
19 received both a phone call and then later e-mail  
20 correspondence, informing me that he had received  
21 notice from our customer service center in San  
22 Antonio and they overheard something on the line.

23 MR. ENGELMAN: I'm objecting to  
24 the question.

25 MS. KING: It's not being offered

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1           for the truth of the matter. It's being  
2           offered to indicate the state of mind of  
3           the Debtor that would have led them to  
4           want to terminate the agreement with  
5           "ATN".

6           THE COURT: Any response to that  
7           from anyone?

8           MR. ENGELMAN: It may be a state  
9           of mind of perhaps Mr. Lacho, but he is  
10          not here. I don't believe that the  
11          state of mind of this witness or the  
12          fact of him giving an example of -- him  
13          trying to give information of what  
14          somebody else may have said is  
15          pertinent.

16          MS. KING: Finish what you're  
17          saying.

18          MR. ENGELMAN: What I said was  
19          I mean, this is not what this  
20          gentleman's statement is what he is  
21          testifying. I mean, it's [inaudible]  
22          perhaps the state of mind of Mr. Lacho  
23          who was mentioned here but it's not this  
24          gentleman's state of mind and I think  
25          it's therefore -- I mean, it doesn't fit

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1 with any exception to hearsay and it's  
2 clearly trying to introduce evidence by  
3 what somebody else said because I can't  
4 cross examine that person.

5 THE COURT: I think it's true and  
6 who made the decision on this at  
7 Worldcom as to not to enter into the  
8 seventh amendment.

9 THE WITNESS: That was a decision,  
10 Your Honor, that we were told after we  
11 received notification.

12 THE COURT: By who?

13 THE WITNESS: Our Vice President  
14 in the Channels area and also in consult  
15 with our legal department.

16 THE COURT: Well, let me hear  
17 from Debtor's Counsel in response to  
18 the objection.

19 MS. KING: Mr. Ahern was very  
20 involved with the decision to accept the  
21 discontinuation of the "ATN" agreement  
22 and the relation that he wanted to  
23 testify to is directly related to the  
24 reason why Worldcom decided to initiate  
25 the acceptance of the termination and

WORLDCOM, INC.

1                   therefore, critical to the mind set of  
2                   the Debtor in terms of the acceptance of  
3                   the termination.

4                   THE COURT: I understand -- when I  
5                   asked the witness before we took a break  
6                   and I will ask it again. How does the  
7                   witness know that anyone at Worldcom  
8                   believed what "ATN" what he just alleged  
9                   that they were doing?

10                  THE WITNESS: I told that by our  
11                  Sales Director who handled the "ATN" who  
12                  had a conversation with somebody in our  
13                  customer service area and with Mr.  
14                  George Bein as well.

15                  THE COURT: Well, what involvement  
16                  did you have with the decision made at  
17                  Worldcom not to renew? I'm not sure  
18                  that accepting the termination is the  
19                  correct phrase, but involved with the  
20                  decision that ultimately led to the  
21                  acceptance of the termination?

22                  THE WITNESS: Yes, I understand  
23                  what you're saying, Judge, completely.  
24                  In my direct capacity, I worked on all  
25                  of our contract matters and interfaced

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1 with our legal department so in this  
2 particular instance in reviewing both  
3 the termination notice from "ATN" and  
4 the seventh amendment that was, in  
5 effect, removing the exclusivity, all  
6 those were processes that I was involved  
7 in and had a lot of input to both, the  
8 business decision behind it and also in  
9 consult with our legal department. So  
10 when the information that was presented  
11 to me by Mr. Lacho was told, we  
12 discussed it with our legal department  
13 and determined that -- that at that time  
14 that there were or that there appeared  
15 to be a breach of Section 8-1 and that  
16 rather than going forward with the  
17 amendment to removing exclusivity, we  
18 decided at that point the best course of  
19 action was to simply agree that the  
20 termination or the 30 day notice that  
21 "ATN" provided to us had indeed lapsed  
22 and that we were in agreement that the  
23 representation agreement had been  
24 terminated.

25 THE COURT: Then I'll overrule the

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1 objection and accept it as not for the  
2 truth of the matter but as to the state  
3 of mind at Worldcom in making its  
4 decision with respect to the termination  
5 letter sent by "ATN".

6 Q. Just to clarify, after or on about July  
7 the 15<sup>th</sup>, after you had sent the seventh amendment  
8 of the agreement to "ATN" -- on or about July the  
9 15<sup>th</sup>, what information became available to you  
10 that indicated that you were going to eventually  
11 -- going to accept the termination of the  
12 agreement?

13 A. The trigger to this was that right after  
14 on or about July the 31<sup>st</sup>, Mr. Lacho called me and  
15 said that there was an apparent solicitation by  
16 "ATN" to one of the "TTI" customers and he wanted  
17 to know, you know, what I thought about that. I  
18 reviewed the contract and I told him that in my  
19 opinion, it was a clear violation of 8.1 and I  
20 sought the opinion of our legal department  
21 [inaudible] and we informed Mr. Lacho and he sent  
22 us some information to our legal department and we  
23 had discussions on it and just determined that  
24 rather than go forward with any other amendments  
25 to the agreement or agreeing to rescind the

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1 agreement, that the best course would be to  
2 acknowledge that the 30 day notice had indeed  
3 lapsed effective July 28<sup>th</sup> and that we considered  
4 the agreement to have been terminated. And what I  
5 asked our legal department to do was to draft a  
6 letter and send it out from the legal department,  
7 so that it had one of our Associate Counsels on  
8 the letter that indicated the agreement of  
9 termination of July 28<sup>th</sup> but also could point out  
10 to "ATN" the obligations under Section 8.1 of the  
11 agreement and for them to be able to continue to  
12 receive, you know, commissions. In effect, not to  
13 breach that section of the contract.

14 Q. And with regard to that provision,  
15 attached indeed to Exhibit No. 10, now, is that  
16 letter with that MCI Worldcom letterhead, the  
17 letter to which you refer; is that the one  
18 involved?

19 A. Yes, that is the letter that our lawyer,  
20 the MCI lawyer, directed at direction and sent out  
21 to "ATN".

22 Q. And the third paragraph that begins with  
23 the reference to 8.1. Is that the paragraph that  
24 was included at your request?

25 A. That's right, it's really meant to be a

WORLDWIDE, INC.

1 strong reminder of the applications that we wanted  
2 to hold the representative to.

3 Q. And that provision was included and you  
4 based it upon your understanding that that Section  
5 8.1 had been violated?

6 A. That's right. We learned indeed there  
7 was clear solicitation of our customers.

8 Q. By "ATN"?

9 A. Yes.

10 Q. Subsequent to sending the August 6<sup>th</sup>  
11 letter engaging in a notice of termination, when  
12 was the termination have essentially been  
13 effective on the agreement?

14 A. [inaudible] after the notification date  
15 on the letter from "ATN", which would have made  
16 the effective termination date -- July the 28,  
17 2003.

18 Q. And [inaudible] letter specifically  
19 specifies that, is that correct?

20 A. Yes. I'm acknowledging that agreement  
21 is now effective as of that July 28<sup>th</sup> date.

22 Q. Subsequent to sending this letter,  
23 specifically to "ATN", did "TTI" have any further  
24 discussions with "ATN" relating to any other  
25 agreements or amendments or otherwise?



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1 A. There were communications on the part of  
2 the sales channel with "ATN" and I believe Mr.  
3 Bein specifically.

4 Q. Can you tell me what those  
5 communications were at all?

6 A. It was a couple of short e-mails between  
7 Mr. Bein and Mr. Lacho as to whether or not there  
8 was -- whether there was any likelihood in trying  
9 to solve the relationship or continuing with the  
10 relationship under the agreement that had been  
11 terminated, or whether we would rescind that  
12 notice and trying to pick up where we left off.  
13 But by removing exclusivity that was a sales  
14 consideration, that wasn't [inaudible] the  
15 operations for legal conversation.

16 Q. So, it wasn't a conversation that you  
17 yourself had been involved in, in any manner?

18 A. No. Nor would I object, I believe,  
19 because I knew in my opinion the August 6<sup>th</sup>  
20 letter, that the legal department sent out,  
21 clearly stated that the agreement had been  
22 terminated and we already sent the notice and  
23 weren't going to continue to forget about it.

24 Q. Just to back up for a second, did  
25 Worldcom ever execute the seventh amendment to the

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1 agreement at all?

2 A. No. "ATN" sent the agreement after the  
3 August letter was sent and the agreement -- that  
4 is the amendment, a signed amendment, from "ATN"  
5 came to me but it was never executed.

6 Q. Now, turning our attention and moving on  
7 to Exhibit No. 11. Can you tell me what that  
8 document is?

9 A. This is a memorandum that was sent out  
10 by our department, our Cost Development Department  
11 to agents and partners, if you will, companies or  
12 individuals who might receive commissions from us  
13 explaining a little bit about, you know, what is  
14 going on as a result of the bankruptcy. And it  
15 points to our web site that has an inflow about a  
16 disk where some people could click on and key into  
17 an access with that information between July 22<sup>nd</sup>  
18 and early in August. You know, it was pretty  
19 hectic with regard to the company and trying to  
20 get information to the appropriate people who had  
21 questions about how is the bankruptcy impacting  
22 and what is going to occur.

23 Q. About how many agents would have  
24 received this mass communication from Worldcom?

25 A. I think the way we decided to do it was

WORLDCOM, INC.

1 to -- because we had, you know, agreements and  
2 well over one thousand agreements out there, many  
3 of whom were not really actively selling anything  
4 that we thought that, you know, the most important  
5 people that should be made aware of this were  
6 anybody who had recently received a commission  
7 check from the company.

8 [end of tape 1, side b]

9 DIRECT EXAMINATION

10 BY MS. KING:

11 A. Those would have been agents who are  
12 either under Worldcom's representation agreements  
13 or "TTI" representation agreements or had both  
14 types of agreements.

15 Q. And the date of the letter is August 2,  
16 2002?

17 A. Yes, it is.

18 Q. And so would this letter have been sent  
19 out in the mass mailing prior to the August the  
20 6<sup>th</sup> notice of termination sent to "ATN"?

21 A. Yes, I think the letter -- because we  
22 had already had that correspondence, that we were  
23 trying to get to the different agents and I think  
24 what we were trying to do at that point, as I  
25 said, was get it to those agents who had recently

WORLD.COM, INC.

1 received commissions, but I know I had  
2 conversations with our External Commissions  
3 Department, that they had all the most recent  
4 addresses and contact names of the agents so I  
5 think we just had those folks, you know, pulling  
6 the addresses and sending out these letters and it  
7 probably would have went to maybe -- in the  
8 neighborhood of maybe 350, 360 agents.

9 Q. I'm returning your attention to Exhibit  
10 -- Movant's Exhibit No. 12. Can you tell me what  
11 the -- or what each of these papers -- oh, I'm  
12 sorry, the first page which looks to be some sort  
13 of front page and the second two pages which look  
14 to be a letter and what specifically these  
15 documents are, please?

16 A. Well, agent priority, a name -- as I  
17 said agent priority, which is a name given to the  
18 web site that is accessible to agents that we have  
19 under contract. So, you know, it's a means or  
20 method of our agents getting notification on  
21 products and they submit orders on line and it's a  
22 quick way to get information out to those who are  
23 in our program. So what we did was we began -- we  
24 were working with people who handled the  
25 administration of this web site and we had them

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1 post out the bankruptcy filing Chapter 11 web  
2 site, sending a letter to agents regarding  
3 information that they should read and which  
4 directed them to the location where to go.

5 Q. And after the termination of the  
6 agreement, the order or the August 6<sup>th</sup> letter that  
7 was sent by Worldcom to "ATN", would Worldcom have  
8 expected "ATN" to continue to access an agent web  
9 site hosted by Worldcom?

10 A. I don't know if I want to put anything  
11 to chance, whether I would have expected them to  
12 do it. I think the way to insure not doing it  
13 would have been to just disable the IB access, the  
14 system. And other than that, if that idea is  
15 active, chances are that somebody will go and read  
16 it.

17 Q. But the web site was really focusing on  
18 active agents, agents who were still actively  
19 involved?

20 A. Well, it's an agent web site and  
21 specifically, if you're "ATN", your agreement is  
22 terminated and you're not an agent anymore. So it  
23 was not meant for them but you know again, if you  
24 had the key to the door.

25 Q. Now, turning your attention to Exhibit

WORLDCOM, INC.

1 No. 15. Movant's No. 15, let me back up for a  
2 second, subsequent to your August 6<sup>th</sup> letter and  
3 your understanding that in late July there had  
4 been violation of the non-solicitation provisions  
5 of 8.1, did you become aware of any further  
6 solicitation effort by "ATN" directed at "TTI"  
7 customers?

8 A. Yes.

9 Q. How did you become aware of such  
10 solicitation efforts?

11 A. Well, I received a faxed copy of a  
12 letter that was sent by "ATN" to a "TTI" customer  
13 encouraging them to move away from "TTI" and  
14 receive the services of another company that "ATN"  
15 had aligned themselves to.

16 Q. When did you receive this letter  
17 approximately?

18 A. That was at the end of October. A copy  
19 of the letter that I received was at the end of  
20 October of 2002.

21 Q. Now, turning your attention to that  
22 specific letter, please -- or Exhibit No. 15, when  
23 you received this letter was it your belief or  
24 understanding that that was the only September  
25 solicitation that "ATN" had sent out?

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1 A. No, not a chance.

2 Q. And why is that?

3 A. I mean, you know, I would say back to  
4 number one, the end of July and what transpired  
5 then and now, the chances of me receiving more  
6 than one letter that went out to a customer, I  
7 mean, that is not the way I viewed it though.

8 Q. This letter dated September 25<sup>th</sup>, is  
9 that correct?

10 A. That's right.

11 Q. Of 2002?

12 A. Yes.

13 Q. And would "ATN" have had received a  
14 commission check in September for -- or from  
15 Worldcom?

16 A. Yes, they would have.

17 Q. On or about what date would that have  
18 check been received?

19 A. Again, around the 15<sup>th</sup> of the month  
20 which was consistent with sent out checks.

21 Q. That would have been for the July period  
22 of time?

23 A. That would have been July post-petition  
24 revenue time.

25 Q. What, if any, action did Worldcom take

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1 upon learning of the direct solicitation in late  
2 October?

3 A. The date I got this letter, I got -- I  
4 faxed it over to our legal department and -- down  
5 in Washington and specifically to Mr. Reynolds who  
6 authored the August 6<sup>th</sup> letter on my behalf. Then  
7 covered it with both him and my Vice President as  
8 to, you know, what the letter entailed.

9 Q. Now, in turning your attention to  
10 Debtor's No. F?

11 A. Yes.

12 Q. Would you tell me, please, what this  
13 letter is?

14 A. Again, this is a June 28<sup>th</sup> letter which  
15 I got around the 28<sup>th</sup> of August, which was faxed  
16 to me, reviewed with Curt Reynolds and George  
17 Hampton as well as actually several other senior  
18 people in our legal department. The result of the  
19 decision was made that he would once again send a  
20 letter or another letter to Mr. Bein, with my  
21 name, which was Worldcom noting the 8.1 provision  
22 in the agreement and the applications under that  
23 with regards to customers as well as the  
24 attachments to the letter that was sent showing  
25 the September 25<sup>th</sup> letter that we received a faxed



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1 copy of and a copy of the August 6<sup>th</sup> letter that  
2 was sent by Mr. Reynolds.

3 Q. Now, were you involved in the decision  
4 to send this follow up letter to "ATN"?

5 A. Very much so.

6 Q. And were there any other alternatives  
7 considered?

8 A. Well, we had discussions as to whether  
9 or not we would simply invoke what we thought was  
10 our right under the agreement to cease paying  
11 commissions for the solicitation as provided in  
12 Section 8.3 of the agreement.

13 Q. But it was determined to take this  
14 course?

15 A. Well, we opted to take this course --  
16 at the time again, a lot of activities were  
17 evolving around the bankruptcy and review of the  
18 contracts that we had and coming closer to the  
19 decisions on what to do with the contract. So,  
20 rather than separate this agent or, you know, out  
21 run anybody else, we just did -- we figured out  
22 the best course of action was once again sending a  
23 strong reminder letting them know that we're aware  
24 of the activities that are ongoing and, you know,  
25 give us more time to evaluate and make a

WORLDCOM, INC.

1 determination as to what we wanted to do.

2 Q. Did you have concerns about the impact  
3 of the solicitation efforts on your customers?

4 A. Yes, I mean, I wrote e-mails to, you  
5 know, our legal department and to my Vice  
6 President, my VP in our Legal Department, you  
7 know, stating that the concerns that -- if one is  
8 out there, the chances are good that there are  
9 many, many more solicitations that might have gone  
10 on so what is the impact of this going to do to  
11 our customer base, our revenue stream.

12 Q. Now, subsequent to sending out this  
13 November 11<sup>th</sup> letter, did you become aware of any  
14 further solicitation efforts by "ATN"?

15 A. Yes, I was aware.

16 Q. How did you become aware of those  
17 efforts?

18 A. Well, on the 4<sup>th</sup> of December I received  
19 notice that there were copies of a mass mailing  
20 that went out from "ATN" and it looked to be in  
21 the November time frame encouraging customers to  
22 now move to a new service provider and talking  
23 about the debilitating effect of the bankruptcy  
24 that it would have on "TTI", who was a service  
25 provider and a customer service provider. So,

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1 yes, we were made aware of that, but our customer  
2 service department had received copies of these  
3 letters and were also assessing increased or an  
4 increase in telephone traffic from customers  
5 inquiring as to what is going on and their need to  
6 move away from you or you guys no longer going to  
7 be there and do we have to go to a new provider.

8 Q. Was there a large increase in volume of  
9 calls during that time frame to the customer  
10 service center?

11 A. To my understanding, in conversations I  
12 had with the director of the customer service that  
13 there was a marked increase in that type of call  
14 that came in, a number.

15 Q. Now, just to back up for a second. Do  
16 you know whether -- or how many calls on average  
17 the customer information center would take a day?

18 A. I'm not sure on the given day. I don't  
19 follow the customer service that closely or all  
20 that closely, but as a result of this activity and  
21 inquiries I had made, I would say that the average  
22 is probably in the 47, 48,000 calls in a month.

23 Q. Now, relating specifically to the "TTI"?

24 A. Yes, this -- my conversation had to do  
25 with San Antonio customer service center which is

WORLDCOM, INC.

1 the only one that I am referencing now. So, yes,  
2 related to the inquiries, yes.

3 Q. Now, I'm returning your attention to  
4 Movant No. 16, please, or 16 and 17, do these  
5 represent the letters that were forwarded to you  
6 in December by the customer service center?

7 A. Yes, they do.

8 Q. Now, and these were the solicitation  
9 letters that you were made aware of? Or the  
10 solicitation letters that "ATN" had sent?

11 A. Yes, they are.

12 Q. Now, moving back to these solicitation  
13 letters that you received in early December. Do  
14 you recall Mr. Bein at that time, that they began  
15 sending them out on November the 15<sup>th</sup> and that was  
16 Mr. Bein's testimony?

17 A. Well, I became aware of these on the 4<sup>th</sup>  
18 of December and yes, I do recall Mr. Bein's  
19 testimony as to the thing that you just mentioned.

20 Q. Now, on or about November the 15<sup>th</sup>, that  
21 was when "ATN" would have received its commission  
22 checks for September generated commissions?

23 A. Yes. I also would question the date of  
24 November the 15<sup>th</sup>. I would almost really think it  
25 was earlier based upon -- in the Exhibit 16 that

WORLDCOM, INC.

1 at the bottom in small print it mentions that  
2 Internet offer that expires November the 30<sup>th</sup> for  
3 the Internet. And that was an offer that would  
4 have expired November the 30<sup>th</sup>. If you're mailing  
5 out something on the 13<sup>th</sup> or 15<sup>th</sup> of November, that  
6 is not a lot of time for an offer to stand. So, I  
7 am almost thinking it predates November the 15<sup>th</sup>  
8 time period.

9 THE COURT: How much further do  
10 you have on direct examination?

11 MS. KING: Just about maybe ten  
12 minutes at most, Your Honor.

13 THE COURT: Go ahead.

14 DIRECT EXAMINATION

15 BY MS. KING:

16 Q. Once you learned that the solicitation  
17 efforts -- or of the solicitation efforts in the  
18 November time frame, generally, what action did  
19 you take then?

20 A. Well, I called [inaudible] I mean, aside  
21 from speaking directly with our Legal Department,  
22 I got in contact with our outside counsel at Weil  
23 and Gotshal, Mr. Marcus.

24 Q. And in relationship to your conversation  
25 specifically related to that, were any

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1 communications sent to "ATN" related to that  
2 effort?

3 A. Yes.

4 Q. Turning your attention to Movant Exhibit  
5 No. 18, can you tell me what that is, please?

6 A. This is a copy of a letter that Mr.  
7 Marcus sent out to Mr. Bein, George Bein, relating  
8 to the solicitation of our customers.

9 Q. Were there any other activities that  
10 Weil, Gotshal undertook with relation to the  
11 solicitation effort?

12 A. Well, by then, you know, it was clear  
13 that, you know, the amount of customers that had  
14 been contacted was only 20 or 50 or 100, by mass  
15 mailing so the best way we felt -- the most  
16 effective way that we could reach out and get back  
17 to these customers and counter the letters and  
18 edge or whatever that were provided to them was to  
19 send a letter to a large or a very large  
20 percentage of the customer base that we have under  
21 the "ATN". So what we did is we prepared a  
22 mailing that went to "TTI" business customers --  
23 I'm sorry, "TTI" residential customers and then  
24 there was also a separate letter that went to  
25 business customers that was sent under the

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1 representative, the "ATN" representative and he  
2 sent it out with the idea of agents over -- making  
3 commissions over \$100,000 and this was a final  
4 warning.

5 Q. Do you know the approximate cost of  
6 sending out those letters?

7 A. Well, the hard cost -- what I mean, the  
8 cost that directly hits budget that I'm  
9 responsible for was in the neighborhood of  
10 \$35,000, which would have been for envelopes,  
11 postage and paper so that gets -- I'm back to my  
12 budget and there are -- there's a soft cost  
13 involved with the number of -- or I should say,  
14 with the dates that we had to coordinate to get  
15 this done, so this was done throughout the  
16 Christmas period as well. So, it was, you know,  
17 sort of short staffing for Christmas time and  
18 which was done for the company. And there was an  
19 added work load in regard to the bankruptcy and  
20 now this came into play. So it was a lot to be  
21 done, too.

22 Q. Now, turning your attention very briefly  
23 to Debtor's Exhibit G and H. Are these accurate  
24 copies of the letters that were sent out to the  
25 customers that Worldcom had cultivated by "ATN"?

WORLD.COM, INC.

1           A.    These are accurate copies of the letters  
2 we brought to our Legal Counsel and sent by the  
3 Vice President of my unit and then sent out, I  
4 mean.

5           Q.    And then briefly turning back to  
6 Movant's Exhibit 18, in the letter from Mr. Marcus  
7 that was sent out on December 23, 2002. Is this  
8 letter -- does it remind "ATN" of issues related  
9 to non-solicitation?

10          A.    Yes, it did.

11          Q.    So the -- what did it say?

12          A.    It directed them, I believe what Mr.  
13 Marcus put out there that they had been contacting  
14 our customers and it was a violation of the  
15 automatic stay resulting from the bankruptcy.

16          Q.    And subsequent to that communication  
17 from Mr. Marcus, did you have cause to learn of  
18 any further solicitation efforts?

19          A.    Efforts such as Worldcom -- the next  
20 thing that we were made aware of was that "ATN"  
21 had begun, I guess, a campaign in regard to trying  
22 to get our agents or those people or companies  
23 that might be subject to agents under our agents  
24 who had been out and would represent our product  
25 to customers and bring us customers. So, my



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1 understanding of that is -- as well was based upon  
2 Mr. Bein's testimony a couple of weeks ago, that  
3 there was about 1,500 solicitations made to our  
4 agent base.

5 Q. And turning your attention to Debtor's  
6 Exhibit No. I. Is this -- do you know, Mr. Ahern,  
7 if this is an example of the solicitation effort  
8 that you're talking about?

9 A. Yes, that's correct.

10 Q. What other name is mentioned in this  
11 e-mail regarding the solicitation of customers of  
12 yours?

13 A. In the third paragraph, it mentions here  
14 that if you're not one of the lucky ones to have  
15 your contract accepted or I should say, perhaps,  
16 if you are one of the lucky ones to have your  
17 contract accepted and not rejected, so that is  
18 great. If not, you should be or you should  
19 consider moving your customers to a vendor who  
20 will pay you commissions.

21 Q. What was your understanding of the  
22 import of that in regard to customers?

23 A. Well, it meant -- it's rather than doing  
24 a mass mailing to the end user, it's now a way of  
25 going to another source to try to move customers

WORLDCOM, INC.

1 over to another provider.

2 Q. And did you direct further actions to  
3 "ATN" to stop these further efforts of  
4 solicitations?

5 A. This mailing message of which I received  
6 a copy of, I bought it over to Weil, Gotshal,  
7 where we have reference to Mr. Marcus and he then  
8 sent another letter to "ATN".

9 Q. Turning your attention to Movant's  
10 Exhibit No. 19. That is an accurate copy of the  
11 letter sent by Mr. Marcus?

12 A. Yes, it is.

13 Q. And at what time did Worldcom determine  
14 that it was going to reject the agreement with  
15 "ATN"?

16 A. Well, the contract rejection process was  
17 something that was a "weak link process" from our  
18 standpoint in terms of working both with our Legal  
19 Department and other areas to first gather up all  
20 agreements that we had because it probably had  
21 started in the late September time frame that we  
22 began to put together lists and categories. And  
23 those contracts that you know were, obviously,  
24 going to be rejected, because they had long since  
25 been dormant and just no sense in having them

WORLDCOM, INC.

1 around. And there were other contracts that  
2 probably had value to the estate. So, probably,  
3 the measure that we took, yes, probably there  
4 would have been others that would have been  
5 questionable that we would want to consider. So,  
6 from that September period of time to the late  
7 November, early December times, there was movement  
8 and discussion of which agents do we want to know  
9 this first and I will classify it as being  
10 contracted we would want to submit to the Court  
11 for further -- for rejection.

12 Q. And at the time that "ATN" would have  
13 been notified of the rejection, were there other  
14 agents who had been paid monthly commission checks  
15 which have been passed upon and there were others  
16 where contracts were rejected by Worldcom. So,  
17 some were rejected by Worldcom?

18 A. Yes.

19 Q. Approximately how many others?

20 A. I would say in the neighborhood of about  
21 280 to 300 would be the number.

22 Q. Now, was "ATN" notified in the same  
23 manner -- the same as these other agents were?

24 A. Yes. I want to make one thing clear.  
25 That is, every agent communications that we made

WORLDCOM, INC.

1 from my department and from -- in support of our  
2 department, we kept those communications  
3 consistent and the same.

4 Q. And finally, just to clarify, were any  
5 of the customers that were procured by any of  
6 these agents and did Worldcom view these customers  
7 as its customers?

8 A. Yes. In fact, that they are and the  
9 fact that they still are, I mean.

10 Q. In terms of the activities that Mr. Bein  
11 testified that "ATN" undertook operating a small,  
12 very small service center, would there have been  
13 any statement or any indication by Worldcom to  
14 "ATN" that those activities should have been  
15 discontinued after the termination of the  
16 agreement?

17 A. There would have been no reason, none at  
18 all, we would not want to do that. I mean, if I  
19 could just consult with Counsel for one moment,  
20 please?

21 MS. KING: No further questions,  
22 Your Honor.

23 THE COURT: All right. Thank you.  
24 We'll take a lunch recess and we'll  
25 begin cross examination after lunch.

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1 MR. ENGELMAN: We'll pick it up  
2 after?

3 THE COURT: We're going to take a  
4 break until 2:15 and we'll pick this  
5 matter up at 2:15 and I have a matter  
6 initially for about ten minutes, so I  
7 will ask the Court Reporter to return at  
8 or near 2:00.

9 [LUNCH RECESS]

10 CROSS EXAMINATION

11 BY MR. ENGELMAN:

12 Q. My name is David Engelman.

13 A. Good afternoon, Mr. Engelman.

14 Q. I'm going to ask you a few questions, if  
15 I may, please. Now, you indicated that in your  
16 role as the Director of Business Operations for  
17 the Channel Division, that you're familiar with  
18 all the issues. Is that correct?

19 A. I'm familiar with all the standing type  
20 agreements that we have and a great deal of  
21 contact myself, individual contact.

22 Q. Now, you indicated today your  
23 familiarity with "ATN"? Is that correct?

24 A. That's correct.

25 Q. Now, I've used "ATN" as "HSG", so if you

WORLDCOM, INC.

1 hear me use "HSG", you'll understand that would  
2 also mean "ATN"?

3 A. No problem.

4 Q. Now, it's important for your company to  
5 have customers continue to utilize Worldcom's  
6 services; is that correct?

7 A. Absolutely.

8 Q. And that is what generated the income  
9 for the company?

10 A. Yes.

11 Q. And isn't it true that there is certain  
12 types of a customer with follow up services  
13 typical and necessary when companies sign up for  
14 Worldcom?

15 A. To a degree, a short period.

16 Q. Customers may call up and ask for some  
17 kind of question or to have maybe a change of  
18 address or things of that nature? Isn't that  
19 true?

20 A. That's correct. Throughout all customer  
21 service department, yes.

22 Q. Now, what specific knowledge do you  
23 have, that is, Ray Ahern, have about the follow up  
24 customer services that Worldcom provides?

25 A. As Worldcom, I know that when customer

WORLDCOM, INC.

1 service centers approximately 14 hours a day for  
2 any type of standard type billing inquiry or  
3 customer change of address or name and the likes,  
4 as well as 7/24 technical section as well.

5 [end of Tape 2, Side A]

6 CROSS EXAMINATION

7 BY MR. ENGELMAN:

8 Q. And isn't it true that very often  
9 representation agents, "ATN" included, also would  
10 receive calls from customers?

11 A. Very probably because they set up  
12 customers that may be who a customer would tend to  
13 call perhaps.

14 Q. Isn't it true also that it would be  
15 important to Worldcom's business, that if a  
16 customer were to call "ATN" or a similar type  
17 agent that whatever services were being asked for  
18 by the customer [inaudible] "ATN" would provide as  
19 Worldcom?

20 A. I think in that vein, I think it would  
21 be important that Worldcom -- that for any  
22 customer who would call and contact any of our  
23 representatives, that the representative would  
24 obviously take the call and direct it to our  
25 customer service center or maybe the customer

WORLDCOM, INC.

1 would be looking for new services, that would be  
2 even better, I mean.

3 Q. Or if the customer was just looking to  
4 ask a few questions that didn't need a change of  
5 service or they didn't need Worldcom to intervene,  
6 that the agent could also provide that  
7 information?

8 A. I mean, if the customer calls that is  
9 great. It's not a requirement of the agent but,  
10 you know, if I'm somebody who has signed up a  
11 customer and they call me and I can give them a  
12 quick answer to it, fine.

13 Q. Now, I believe you testified that "ATN"  
14 had been doing business prior to Worldcom's merger  
15 with Worldcom or its predecessor prior to its  
16 merger in 1998, is that correct?

17 A. Yes, that's correct.

18 Q. And during that -- or during its  
19 inception of "ATN" or inception of doing business  
20 with Worldcom, or whatever, it's predecessor until  
21 termination, it was involved in procuring  
22 customers for Worldcom to provide services. Would  
23 that be correct?

24 A. That's right. The agreement that I have  
25 and even in our most recent agreement, that was